IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4460 OF 2007

Oswal Bandhu Samaj, Pune & Ors. ... Petitioners

Versus

Kundanlal Chunilal Khivansara & Ors. Respondents

Mr. Rajiv Patil, Advocate h/f Sachin S.Punde, Advocate for petitioners.

CORAM: J.H.BHATIA,J.

DATE: 19th October,2007.

P.C.

1. Heard learned Counsel for the petitioners.

2. It appears that the petitioners have passed certain resolution. That resolution was challenged by the respondents by filing Regular Civil Suit No.1338 of 2006. The petitioners who are the original defendants, appeared and filed an application contending that the suit is not tenable under law. After hearing parties, by an order dated 23.4.2007, the trial Court rejected

the plaint under Order VII Rule 1(d) of the Civil Procedure Code. It appears that the plaintiffs thereafter moved an application before the trial Court seeking stay of that order on the ground that the plaintiffs wanted to prefer an appeal against that order. Therefore, the learned trial Court stayed its own order rejecting the plaint under Order 41 Rule 5(2) of the C.P.C. till 15.6.2006. Against that order, the original defendants have preferred the present petition. The trial Court has passed order under Order 41 Rule 5(2) of the C.P.C. within the period of appeal and, therefore, prima facie, there is nothing wrong with the order. Further, the order was passed on 27.4.2007 for a limited period upto 15.6.2006. Thus, that order is no more in force and this petition has become infructuous.

The Petition stands disposed of as infructuous.

--

(J.H.BHATIA,J.)